

EXHIBIT D

**EXPLANATORY MOTION REGARDING THE URGENT
MOTION OPPOSING THE FILING OF COUNTERCLAIM AND
REQUESTING ITS WITHDRAWAL FROM THE COURT
RECORD**

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
SAN JUAN JUDICIAL CENTER
SUPERIOR PART

EMPLOYEES RETIREMENT SYSTEM OF
THE GOVERNMENT OF THE COMMONWEALTH
OF PUERTO RICO; PEDRO JOSÉ NAZARIO
SERRANO, HIS SPOUSE, JUANITA SOSA PÉREZ
AND THEIR CONJUGAL PARTNERSHIP; JOEL
RIVERA MORALES; MARÍA DE LOURDES GÓMEZ
PÉREZ; HÉCTOR CRUZ VILLANUEVA; LOURDES
RODRÍGUEZ; AND LUIS M. JORDÁN RIVERA

Plaintiffs

v.

UBS FINANCIAL SERVICES INCORPORATED OF
PUERTO RICO AND UBS CONSULTING SERVICES
OF PUERTO RICO; ABC INSURANCE COMPANY,
INC.; XYZ INSURANCE COMPANY, INC.

Defendants

CIVIL NO.: KAC 2011-1067 (803)

RE: BREACH OF CONTRACT;
DAMAGES

[Court Clerk Receipt Stamp
2020 MAR -11 P 1:07]

EXPLANATORY MOTION REGARDING
“URGENT MOTION OPPOSING THE FILING OF COUNTERCLAIM AND REQUESTING ITS
WITHDRAWAL FROM THE COURT RECORD”

TO THE HONORABLE COURT:

COME NOW Co-Plaintiff the EMPLOYEES RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO, together with INDIVIDUAL
PLAINTIFFS, RETIREES OF THE EMPLOYEE RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO - PEDRO JOSÉ NAZARIO
SERRANO, HIS SPOUSE JUANITA SOSA PÉREZ AND THEIR CONJUGAL PARTNERSHIP;
JOEL RIVERA MORALES; MARÍA DE LOURDES GÓMEZ PÉREZ; HÉCTOR CRUZ
VILLANUEVA; LOURDES RODRÍGUEZ; AND LUIS M. JORDÁN RIVERA, through the
undersigned legal counsel and very respectfully STATE and REQUEST:

1. On March 9, 2020, the appearing party filed an “Urgent Motion Opposing to the
Filing of Counterclaim and Requesting its Withdrawal from the Court Record”, hereinafter the
“Urgent Motion”, to which was attached as **EXHIBIT 3** a fragment of the transcript of the hearing
held on November 26, 2019.

2. Attorney Roberto Quiñones has alerted us that there are some statements in
paragraph #55 that have been mistakenly attributed to him when, in fact, they were made by
attorney Francisco Pujol. We have listened to the recording of the hearing and, indeed, the
statements initially attributed by the reporter to attorney Quiñones were really made by attorney

I, Gladys Rodríguez-Fornaris, MA in Translation (UPR 1995), DO CERTIFY that I have translated into English the foregoing
document, as submitted in Spanish by the interested party; and that said translation is true and correct to the best of my knowledge
and abilities.
S/ GLADYS RODRÍGUEZ-FORNARIS

Francisco Pujol. We offer our most sincere apologies to this Honorable Court and to brothers counsel for this mistake in the transcript that was definitely out of our control.

3. In light of that, we request this Honorable Court to deem as corrected paragraph #55 of our Motion and lines 10-17 of page 62 of EXHIBIT 3 of the Urgent Motion, to read as follows:

[...]

ATTY PUJOLS: Your Honor, you're right.

HON. JUDGE: There are some results.

ATTY. PUJOLS: You're right. And the damages, what can happen-

HON. JUDGE: There is a difference between what's alleged over there and what's alleged over here.

Transcript - page 62, lines 10-17. (Emphasis added).

4. Consistent with the foregoing, page 62 is attached hereto so it can be substituted in the record of this Honorable Court.

5. For the same reasons, this Honorable Court is requested to deem as not asserted our allegation that attorney Quiñones had made a judicial admission, as stated in Section II (D), paragraphs #54 to #57 and Section III, paragraph #60.

6. Regardless of the aforementioned clarification, the appearing party reaffirms its assertion that it is unsuitable in this case to bring a counterclaim based on a matter that is not being litigated before this Honorable Court, but in the US District Court for the District of Puerto Rico. In any event, the statements of this Honorable Court so confirm:

HON. JUDGE: Again. Here it's being alleged that UBS gave an advice deviated from the fiduciary duty that, according to the plaintiffs, it had to the Retirement System. Because it wanted to profit from that sale. Because as a result of that sale, it collected \$35 million in commissions.

And, then, the Retirement System followed UBS' recommendations and by following the UBS' recommendations, well, it was negatively impacted because the recommendations given by UBS did not generate the expected results.

There's no mention here that those bonds are wrongly issued, are illegal, whatever. I'm not going to resolve that, the validity of the bonds. They've already been issued.

Transcript - pages 61-62, EXHIBIT 3 (Emphasis added).

WHEREFORE, Plaintiffs respectfully request this Honorable Court to deem as corrected page 62 of the Transcript attached as EXHIBIT 3 to the "Urgent Motion Opposing to the Filing of

Counterclaim and Requesting its Withdrawal from the Court Record"; substitute it for the page attached hereto; and deem as not asserted the allegation on the judicial admission made by UBS; together with any other remedy pursuant to law in favor of the appearing parties.

WE HEREBY CERTIFY: That a true and exact copy of this motion was sent today to:
PAUL J. LOCKWOOD, ESQ. - paul.lockwood@skadden.com; NICOLE A. DISALVO, ESQ., Nicole.DiSalvo@skadden.com; and ELISA M.C.KLEIN Elisa.Klein@skadden.com; ROBERTO C. QUIÑONES RIVERA, ESQ., - rcq@mcvpr.com; MYRGIA M. PALACIOS CABRERA, ESQ. - mpc@mcvpr.com.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico on this 11th day of March, 2020.

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CARLOS LÓPEZ LÓPEZ

I, Gladys Rodríguez-Fornaris, MA in Translation (UPR 1995), DO CERTIFY that I have translated into English the foregoing document, as submitted in Spanish by the interested party; and that said translation is true and correct to the best of my knowledge and abilities.
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S/ GLADYS RODRÍGUEZ-FORNARIS

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15. HON. JUDGE: There is a difference between
16. what's alleged over there and what's
17. alleged over here.

18. ATTY. QUIÑONES: Your Honor, we
19. also did a-

20. HON. JUDGE: HON. JUDGE: At least from the
21. allegations of the Fourth Amended Complaint,
22. which simplified a lot the process. Because, if
23. you were your telling me of 2011 when
24. we began, when we had a bunch of defendants,